IN THE COURT OF APPEALS
FIRST APPELLATE DISTRICT OF OHIO
HAMILTON COUNTY, OHIO

STATE OF OHIO,	:	APPEAL NO. C-120719 TRIAL NO. B-1202066A
Plaintiff-Appellant,	:	*JUDGMENT ENTRY.*
vs.	:	
RYAN FLAGG,	:	
Defendants-Appellee.	:	

We consider this appeal on the accelerated calendar, and this judgment entry is not an opinion of the court. *See* S.Ct.R.Rep.Op. 2; App.R. 11.1(E); 1st Dist. Loc.R. 11.1.1.

Under R.C. 2945.67(A) and Crim.R. 12(K), plaintiff-appellant State of Ohio appeals from a decision of the Hamilton County Court of Common Pleas granting defendant-appellee Ryan Flagg's motion to suppress evidence. We affirm the trial court's judgment.

Flagg was charged with trafficking in cocaine in violation of R.C. 2925.03(A) and possession of cocaine in violation of R.C. 2925.11(A) following the execution of search warrants at 3111 Hackberry Street and 242 Northern Avenue. He moved to suppress both the physical evidence found during the execution of the warrant at the Hackberry residence and his statements made to the police in response to custodial questioning before and after the execution of the search warrant. In his motion, Flagg specifically challenged his arrest and the validity of the search warrant

executed at the Hackberry residence, where police recovered cocaine and Flagg's personal mail and clothing.

Following a lengthy suppression hearing, the trial court granted Flagg's motion to suppress, concluding (1) that Flagg had standing to challenge the validity of the search warrant; (2) that the search warrant did not establish probable cause to search the residence because it did not contain a temporal reference and was thus stale; and (3) that the initial stop and detention of Flagg was unlawful. This appeal followed.

In a single assignment of error, the state contends that the trial court erred in granting Flagg's motion to suppress evidence. We are unpersauded.

First, the testimony at the suppression hearing contained sufficient evidence to support the trial court's finding that Flagg had a legitimate expectation of privacy in the searched residence, and thus, that he had standing to challenge the search warrant. *Rakas v. Illinois*, 439 U.S. 128, 140, 99 S.Ct. 421, 58 L.Ed. 2d 387 (1978).

Further, the search of the Hackberry residence did not comply with the Fourth Amendment to the United States Constitution and Section 14, Article I of the Ohio Constitution, where the search warrant lacked a temporal reference to criminal activity sufficient for the magistrate who issued it to conclude that there was probable cause to believe that contraband would be found at the specified location. *See United States v. Hython*, 443 F.3d 480, 485-486 (6th Cir. 2006); *State v. Lee*, 1st Dist. Hamilton No. C-070056, 2008-Ohio-3157, ¶ 14, citing *State v. Lauderdale*, 1st Dist. Hamilton Nos. C-990294 and C-990295, 2000 Ohio App. LEXIS 564 (Feb. 18, 2000). The supporting affidavit for the search warrant must "contain some information that would allow the magistrate to independently determine that probable cause presently exists—not merely that it existed at some point in the past."

Lauderdale at *4, citing *Sgro v. United States,* 287 U.S. 206, 210, 53 S.Ct. 138, 77 L.Ed. 260 (1932).

Here, the affidavit for the search warrant stated, in part:

> The affiant, a Cincinnati Police Officer with training and experience in narcotics investigations has, within the last seventy-two (72) hours, met with a confidential and reliable informant regarding cocaine sales from within the above described premises. The confidential informant placed a call to Bryan Davis reference purchasing cocaine.

In handwriting, to the side of the above-cited paragraph, was the phrase, "cocaine previously bought from premises by CI."

There is nothing in the affidavit to date when the cocaine sales took place at the Hackberry residence. Although the affidavit contained the phrase, "within the last seventy-two (72) hours," the placement of that phrase modified the police officer's action of meeting with the confidential informant, not whether there had been cocaine sales within the premises in the last 72 hours. The handwritten notation to the side of the affidavit supports this interpretation. Accordingly, the trial court properly suppressed the evidence recovered from the Hackberry residence.

And the "good faith exception" to the Fourth Amendment's exclusionary rule is inapplicable here because it was not reasonable for the police officers to have relied on a warrant that was so lacking in indicia of probable cause. *See United States v. Leon*, 468 U.S. 897, 905, 923, 104 S.Ct. 3405, 82 L.Ed.2d 677 (1984); *Hython*, 433 F.3d at 488-489; *Lee*, 2008-Ohio-3157, at ¶ 21 and 27.

Finally, the testimony at the suppression hearing supports the trial court's finding that Flagg's arrest prior to the execution of the search warrant was unlawful. *See Bailey v. United States*, ___ U.S. ___, 133 S.Ct. 1031, 185 L.Ed.2d 19 (2013)

(holding that the area within which occupants of a residence may be detained incident to the execution of a search warrant is confined to the immediate vicinity of the premises to be searched). Thus, any statements made during Flagg's unlawful detention were properly suppressed. *See State v. Maurer*, 15 Ohio St.3d 239, 255, 473 N.E.2d 768 (1984); *Brown v. Illinois*, 422 U.S. 590, 95 S.Ct. 2254, 45 L.Ed. 2d 416 (1975).

Even if there had been probable cause to detain Flagg prior to the execution of the search warrant, we note that the police did not provide Flagg with his *Miranda* warnings until after the execution of the warrant. Therefore, the statements that Flagg made to the police during the custodial interrogation that occurred before the administration of the warnings were not admissible. *See Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed. 2d 694 (1966). And Flagg's post-*Miranda* statements, made after the execution of the search warrant, were tainted by the illegal search, and suppression of those statements was warranted to protect the Fourth Amendment guarantee against an unreasonable search. *See Wong Sun v. United States*, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963).

Accordingly, the state's single assignment of error is overruled, and the judgment of the trial court is affirmed.

Further, a certified copy of this judgment entry shall be sent to the trial court under App.R. 27. Costs shall be taxed under App.R. 24.

HILDEBRANDT, P.J., CUNNINGHAM and **FISCHER, JJ.**

To the clerk:

Enter upon the journal of the court on August 23, 2013

per order of the court _____.

Presiding Judge